

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
SUPPLEMENTAL
BRIEF**

19

74-1451

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United States Court of
Appeals Second Circuit
United States Courthouse
Foley Square

74-1451

Boston U. United States

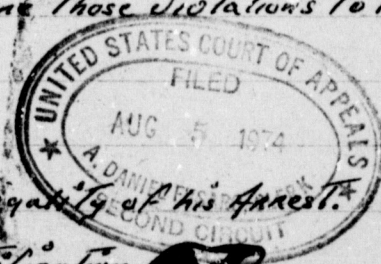
Re: 74-1451

Appellents Brief In His
Own behalf. (Supplement)

Appellant was convicted of a bank robbery in The eastern
District of New York, Judge Costantino presided.

Appellant feels that his conviction was sustained by false, and
perjured testimony, and evidence that should have been
suppressed. Because of the governments complete, and deliberate
disregard for appellents constitutional rights.

Appellant will now attempt to out-line those violations to the
best of his laymen ability.



- (1) Appellant challenges the legality of his arrest.
- (2) Appellant challenges the identification.
- (3) Appellant challenges the governments systematic
exclusion of black people from his jury.

Appellant asks this honorable court not to judge him by the
mistakes he will make in preparing this brief, because he is
a layman, and well realizes it. Appellant did take the
advice of Mr. Flannery, and wrote a letter to his attorney.
He also wrote Judge Costantino, he has heard nothing from
either of them.

He has no Transcript, And is writing only from memory. The Only information he has recieved concerning his Appeal Was in Mr. Flannery's letter of June 11, 1974.

So you should well understand Appellents feeling & need To protect his Appeal, As best he can.

(A)

An Illegal Arrest

During The course of The governments investagation of The Bank robbery in question The morning of June 3, 1971. They stake-out & vehicle they claimed was The getaway Car used in The robbery.

As they were watching This car According To The Arresting Agents. Appellent drove & cab into The Area. Appellent got Out of his cab, And walked in The opposite direction of The Alleged getaway car To & vacant lot And relieved him- self of waste. (water) And returned To his vehicle.

A passenger, Danny Washington, Also exited The cab. According To The Agents Testimony, And went directly To The getaway Car, And proceeded To do Things they consider suspicious Which Amounted To vandalism, of The getaway car.

By Their own Testimony, I did nothing To Aid him. As A mat- ter of fact. I could not even see him from where I was, In My cab. Because of & row of hedges surrounding The pro- ject parking lot.

How They from Another sixty, Or Seventy yards beyond me, did So is beyond me Again. Mr. Washington returned To The cab and We started To leave The Area, Making & U, Turn And going in The Direction we came from. The Agents Testified That The cabs Lights were off, While making The Turn, Or leaving The Area In general.

This made them suspect that I was a party to what Danny Washington was doing. (A party to vandalism)

At that time the agents moved in, and stopped Appellents cab by surrounding it, with their cars. They admit having their guns drawn. But they claim to have asked Appellent for some identification. At which time I produce a wallet, and gave it to them. And it had two different drivers licenses in it, one in the name I gave them, and another in the name John Boston. And that's when they place me under arrest, and read me my rights.

I had no such luck. From the moment my cab was stopped all I had was guns poke at me, Man handling, and every verbal abuse imaginable. I was asked for nothing, and I gave them nothing. (They got what they wanted) There was no pat-down for weapons, but a careful and at times brutal search.

At the time the agents stopped my cab according to their own testimony I had committed no crime. As I sat in that cab with a government car on each side, and in front of me, and agents all around, the car with guns in every window trained on me. By no stretch of any mans imagination, was I not very much under arrest.

Nothing in my behavior justified an arrest for any crime, much less bank robbery. If I had been a white cab driver, I would have been unnoticed, and not suspected. By me being black, and the three men involved in the bank were black my 4th amendment rights were overlooked. The arrest was no more than an exploratory move on the part of agents involved.

And can not be supported while the 4th Amendment gives a man, or any person the right to be secure in his, or herself against unreasonable searches and seizures. *Terry v. Ohio* 392, U.S. 1, 22-24 (1968) *Adams v. Williams* Also.

The 4th Amendment protects a citizen against exploratory acts by the police. See *Herry v. U.S.* 361, U.S. 98, 100-01, 80 S.Ct. (1959) *Sibron v. New York* 392 U.S. 40 65-66 (1968)

(B)

Descriptions

The government made an attempt to justify their arrest by saying that descriptions given them by bank employee's help to establish probable cause.

There were a number of descriptions given, and I hope the Court will review them. I'm sure you will agree with me that on the basis of those descriptions any black person that entered the stake-out area could have been arrested. Mr. Dente, one of the bank employee's gave this description. One was light brown & hundred and eighty pounds and five feet nine inches tall. One was dark brown same height same weight as the other. One was black same height and weight as the others. I won't bother to say anymore on this subject. except Mr. Dente was just as good an identification.

(C)

Informant

The arresting agents testified that they heard Appellents Name John Boston, on their car radio. He is one of the bank robbers this communication said. None of them, the agents knew the time of the message, none of them knew who sent the message, none of the agents involved in the arrest knew, or talked to the informant.

So I was arrested on ~~he~~ hear-say Third party hear-say AT That. I Ask The government To produce This Alleged informer. Under no circumstances would They reveal his identity. After My Attorney made it plain That he could ^{be} produced in a manner That would prevent me from seeing, or knowing who he was. They finally admitted That he had never been used before. Meaning he was unreliable.

I believe in All sincerity That The government informer is no More Than A (Myth) To justify And arrest made illegally. And The government has failed in its attempt To show probable Cause for That arrest.

Probable Cause

(1) The Fourth Amendment To The constitution of The U.S. provides The right of people To be secure in Their persons Against any Unreasonable seizures, shall not be violated And no warrant Shall issue, but upon probable cause, supported by o. Affirmation, And particularly describing The person To be seized.

(2) Probable cause is established by statements of persons having And showing personal knowledge of The facts constituting The offense, statements upon information, And belief, OR As He verily believes, Are insufficient.

The government could not get a warrant on The information Received from The Alleged informer, So They didn't Try. And The government had no desire To have Their informer Tell what he knew, IF They have one AT All.

(3)

Production of informer

Roviano U. S. 553, U.S. 53, 77 S. CT. 623, 1 L. Ed 639 (1957)
The Supreme Court held That where in An Actual Trial of

A Federal criminal case, The disclosure of An informant's Identity is relevant And helpful To The defense of An Accused person, Or is essential To A fair determination of A Cause, The privilege must give way.

Also Roviaro, states disclosure of The identity of An informant Is required, In no other way can The defense show An absence of probable cause.

By reason of Mapp v. Ohio, That rule is now Applicable To The state.

In summary The government has failed To show The existence Of probable cause. Their for Appellants Arrest was illegally Obtained And All evidence ~~obtained~~ obtained As A result of That Arrest should have been suppressed, As it is fruit of A poisonous tree.

Albrecht v. U.S. 273, U.S. 1-11 (1927)

An illegal Arrest may invalidate The indictment if it can Be shown That The indictment was based upon The evidence Obtained by such Arrest. Sibron v. New York, And Henry v. U.S.

Identification

(A) The government called two witnesses for the identification. The first was the bank manager Mr. Dente. Mr. Dente's testimony had many discrepancies as to what he told the agents, mainly Agent Jones, about the bank robbers, and what Agent Jones put in his report that Mr. Dente said. Through it all Mr. Dente was certain that the appellant was the man that robbed the bank. But he couldn't recall anything else. It was understood by all parties, that all black people look alike to Mr. Dente, by the ^{time} he had finished his testimony.

(B) The government's second witness on identification was a bank guard, Mr. Jackson, his testimony also conflicted Agent Jones report of what he had said prior. But Mr. Jackson was a very important witness. Mr. Jackson was black, and he was an ex-policeman, prior to his coming to this country. He was also testifying against two black men in front of an all white jury. Mr. Jackson could identify men standing behind him. He also helped to connect the getaway car to the bank. He testified that he followed the bank robbers from the bank, and wrote the licence plate number in the palm of his hand. And Mr. Jackson was certain that appellant was the man.

Mr. Jackson, something of a hero type. Until appellant on memory thought review the transcripts of his first trial, Sept. 1941. There it was. (Mr. Jackson how long did it take the police to get there after the bank robbery) Oh about ten minutes. (Mr. Jackson what were you doing when they arrived) I call them.

So now Mr. Jackson had called police AFTER the bank robbery, according to his Sept. 1971, testimony. Now he was testifying that he ran out of the bank AFTER the robbers. And copied their plate number, but lost them AFTER a few blocks chase. Judge Costantino came to his aid, and covered up the perjury.

(C)


In June, 1971 AFTER the bank robbery, On the 4th of June the F.B.I. release Appellants picture to the press. My picture was release to a number of different news papers. As a result of this a bank employee a Miss Hattie Morse, cut one of the pictures out. My picture along with a story of how I had been arrested in connection with the bank robbery, and how F.B.I. Agents found \$80,000. dollars in an apartment that my sister shared with me, or I shared with her. Miss Morse testified during the first trial that she took this picture to work with her. she testified that she showed the picture to Mr. Jackson and the others, and they talked about it. Miss Morse was called to the stand AFTER Mr. Jackson in 1971. So Mr. Jackson had already denied seeing any pictures of me prior to the ones shown him by the F.B.I. Another lie told by Mr. Jackson. BUT Mr. Jackson to this day deny's seeing that picture.


So Mr. Jackson has told a few lies to help the government with their case. All of them stand out against what we all know to be human nature. Miss Morse is a black woman. Her and Mr. Jackson are the only two black people working in the bank AT THAT time. When ^{she} was asked who she had shown the picture to. The ~~answer~~ ^{answer} Mr. Jackson, and THAT is only human nature. Mr. Jackson would have us think that he ran out of the bank, AFTER three armed men.

4 P
He was n't Armed, And had To run out get into his car
Make A U-Turn And pursue The bank robbers. Unless They
Stood And waited This would have been impossible. And if
They had waited I think it would have been To shoot him if
They were bank robbers. And Mr. Jackson can see behind
Himself better Than he can in front. Yes Mr. Jackson was
Amazing.

(D)

Photographic Identification

Aside from The other points of This identification I have  Talked About. Mr. Wente, And Mr. Jackson both testified
That They were repeatedly shown photographs of me for
Identification purposes. I was Arrested June 3, 1971 I did
Not start Trial until Sept. 13, 1971. The government had
Plenty of Time in which To conduct A formal line-up.
They chose not To do This. I was indicted To the best of my
Knowledge some Time in July 1971.

The government made know Attempt To Arrange A line-up for
Me prior To That indictment. Instead After my indictment
Between Sept. 1, 1971, And Sept. 13, 1971 Agent Jones Took
IT  upon himself To show each of The identification
Witnesses The same picture That was released To The press.
Without notifying me, Or my lawyer. After I was granted A
New Trial by your honorable court June, 1973. Mr. Jones
And The U.S. Attorney conducted The same kind of refresher
Course with Mr. Wente And Mr. Jackson preparing for This
Trial. They both testified That They had been shown my
Picture over And over Again prior To my Trial.

In summary I rely on Wade U. S. 358, 7. 2d 553.
And Kirby U. Illinois June 7, 1972.

The government chose not to give me a fair and impartial line-up. Then I feel, and it's my contention that I had a right to counsel when they were conducting their photo identification.

This photo display did not take place before the initiation of any adverse criminal proceeding - as pointed out by the Supreme Court in Kirby v. Illinois June 7, 1972.

I was already indicted, and the showing of the photographs took place just before the beginning of my trial. This makes the identification very prejudicial to appellant, and very suggestive. Particularly considering the identification witnesses lack of knowledge of anything, except the fact that all of them were certain I was the man. And the way Mr. Jackson was trying to help the government put a ~~very~~ tight case together. I would say not only was the identification overly suggestive; I would say it was suggested to Mr. Dente and Mr. Jackson that they identify me.

11 P

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Discrimination In Selection Of Jury

(A)

In The Eastern District of New York There Are great number Of black people. I would say That They number At lease one Third, If not half of The whole population.

But when it came Time To pick A jury, Out of 48 men, And Women only five, Or six were black.

And The governments Attorney had plenty enough challenges To see To it That none of them sat on my jury.

The exculsion was prejudicial And systematic. And timely Objection ~~was~~ was entered.

Judge Costantino disregarded it And continued The case To Trial. With The same comfort, And indifference That he Showed later on, When we Tried To show him how Mr. Jackson had committed perjury. I feel That in view of The Things I described Above, I should be granted A new Trial, Carter v. Green County 396, U.S. 320, 334, 335, 40 S.Ct. (1970) Swain, Supra 380, U.S. At 221, 85 S.Ct. 824.

Conclusion

I only Ask That you Judge me fairly, And except my humble Brief. I would have liked To be more exact but I have Been deprive of A copy of The Transcript, And Almost of Even Knowing About my Appeal. I have heard nothing From my Attorney's, Or The District court concerning my Appeal To This date 7/1/74. And I understand From your Clerk it is in process.

John M. Boston

Sworn To This day 1st of July, 1974
By E. J. Fischer

E. J. Fischer, Record Clerk
Authorized by the Act of July 27, 1955,
to (18 U.S.C. 4004) Administer Oaths.

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